Agenda

ND Teachers' Fund for Retirement
Board Meeting

Thursday, May 15, 2008
Ft. Union Room
State Capitol
Bismarck, ND
1:00 p.m.

1. Call to order – Pres. Gessner
2. Approval of Minutes of March 13 and April 18, 2008 Meetings – Pres. Gessner
3. FICA Taxation of Contributions – Aaron Webb, Attorney General's Office, and Carol Calhoun, Calhoun Law Group
4. Cost Analysis of Retiree Proposal – Chris Conradi, GRS
5. 2009 Legislation – Fay Kopp
6. Investment Update – Steve Cochrane
7. Eligible Salary Determination – Fay Kopp
8. NCTR and Federal Issues Update - Fay Kopp
9. 2008-09 Board Calendar and Education Plan – Fay Kopp
10. Consent Agenda
11. Other Business
12. Executive Session – Disability application
13. Adjournment

Next Board Meeting: July 24, 2008

Any person who requires an auxiliary aid or service should contact the Deputy Executive Director of the Retirement and Investment Office at 701-328-9885 at least three (3) days before the scheduled meeting.

MEMORANDUM

TO: TFFR Board

FROM: Fay Kopp

DATE: May 8, 2008

SUBJ: FICA Taxation of Contributions

Attached is a memo from Aaron Webb, Assistant Attorney General, addressing an ongoing IRS issue facing NDTFFR and NDPERS. Specifically, the issue is whether an employer is required to withhold FICA taxes on employee contributions "picked up" by the employer, on behalf of an employee, through an offset against future salary increases. Carol Calhoun, Special Assistant Attorney General, will also be available via teleconference to help Aaron explain the legal issues and advise the Board.

I've also included sections from the TFFR Employer Guide which outline the various TFFR employer payment models.

We'll need the legal expertise of both Aaron Webb and Carol Calhoun as the Board re-considers this complex, technical tax issue.

Enclosures

MEMORANDUM

TO: **TFFR Board**

FROM: **Fay Kopp**

DATE: **May 8, 2008**

SUBJ: **Cost Analysis of Retiree 2% Multiplier Proposal**

At the November 2007 Board meeting, the TFFR Board directed GRS to determine the cost of a proposal to provide a minimum benefit to retirees based on the 2.0% multiplier formula.

Chris Conradi has completed this cost analysis (copy enclosed) and will present it to the Board via teleconference at the May 15 meeting.

Please keep in mind that this cost analysis is informational only, and is not the basis for any TFFR legislation being proposed at this time.

Enclosure

MEMORANDUM

TO: TFFR Board

FROM: Fay Kopp

DATE: May 8, 2008

SUBJ: Eligible Salary Determination
Leadership for Learning Incentive Pay

We are waiting for additional documentation from the Fargo school district relating to whether or not certain Leadership for Learning Incentive Payments available to principals, directors, and coordinators, would be eligible salary for TFFR purposes. I have made an initial determination that such payments are not eligible TFFR salary, which the district is appealing to the Board.

I would like to have this issue addressed at the May board meeting so that Fargo can continue its negotiations in a timely manner. While I have some of the documentation necessary for review by the Board, I recently requested additional details. Therefore, I will either bring the materials to the May board meeting, or ask that the agenda item be postponed until the July meeting.

MEMORANDUM

TO: **TFFR Board**

FROM: **Fay Kopp**

DATE: **May 8, 2008**

SUBJ: **FUTURE NCTR MEETINGS**

Each year, NCTR provides a number of educational opportunities for trustees. This year's schedule:

- NCTR Trustee Workshop/Institute – July 27-31, Universal City, CA
  (see enclosed postcard – registration information available in May)

- NCTR 86th Annual Convention – October 11-16, Washington DC
  (registration information available in June)

We will send you additional information as it becomes available, or you may check the NCTR website at www.nctr.org. If you are interested in attending, please contact Bonnie Heit to make your travel arrangements.

MEMORANDUM

TO: TFFR Board

FROM: Fay Kopp

DATE: May 8, 2008

SUBJ: FEDERAL LEGISLATIVE ISSUES

Here are segments of the March/April 2008 edition of the NCTR Federal E- News. I've included those topics which seem to be most pertinent to TFFR trustees.

Federal E-News

March/April 2008

- Feds Hold Tax Roundtable on Governmental Plans; Increased Scrutiny, "Meaningful IRS Presence" in the Works for Public Pension Systems
- House Passes PPA Technicals Without Governmental Plans "Credited Interest" Amendment; Situation Still Unclear
- GASB Announces Formal Review of Governmental Plans Accounting Standards
- NCTR, Other Public Sector Groups Seek Delay of Final IRS "Normal Retirement Age" Regulations

Feds Hold Tax Roundtable on Governmental Plans; Increased Scrutiny, "Meaningful IRS Presence" in the Works for Public Pension Systems

The Internal Revenue Service (IRS) held its first "Governmental Plans Roundtable" on April 22, 2008, in Washington, D.C. to discuss the tax qualification requirements of governmental plans, and NCTR was there. It is clear that the IRS intends to increase its review and enforcement efforts related to public plans, and a new IRS questionnaire is in the works to help the IRS learn about public plans and what our "issues" are with the Federal tax code. While officials stressed that it was not their intention to scare anyone, the next step is "to evolve to compliance."

The Roundtable was ostensibly to assist governmental plans that the IRS felt had previously been "underserved" by the agency's Tax Exempt and Government Entities Division (TE/GE Division). The stated intent was to gather interested representatives from the governmental plan community in order to raise awareness in the governmental plan sector of the need to comply with tax qualification requirements, and to begin a dialogue on how to ensure that governmental plans succeed.

In other words, "We're from the IRS and we're here to help." No joke: they actually said this! Of course, they were joking too…. I think.

But for some, the real purpose of the Roundtable appeared to be to press public plans to seek determination letters, and to announce a new questionnaire program – a program designed for governmental plans to effectively self-identify problem areas for the IRS to address in what will be a new level of enforcement activity.

The day began with a brief address by Steven Miller, IRS Commissioner for the TE/GE Division. He expressed his concern that governmental plans have not previously received the assistance that they deserved from the IRS. Mr. Miller said that the time was right to address this inattention since the IRS began accepting determination letter applications for individually designed defined benefit and defined contribution plans from Cycle C submitters, which includes governmental plans, on February 1, 2008. (This is part of the IRS' new staggered remedial amendment process; Cycle C ends January 1, 2009.)

However, Miller went on to say that the IRS is also concerned with the "risks" that governmental employees may not "get the pension benefits they are entitled to." He specifically referred to the current economic challenges confronting states and it subsequently became clear, as the day progressed, that the funded status of public plans was a major concern. Even when confronted with the fact that governmental plan funding was not under the jurisdiction of the IRS, and that governmental plans (unlike their private sector counterparts), were not synonymous with the employer, Service officials pointed to press reports on underfunding problems and expressed their general concern with the overall "health" of our retirement systems.

The rest of the morning and the early afternoon was consumed with a number of presentations by TE/GE Division staff on why governmental plans must be tax compliant; how governmental plans must be timely amended and submitted for determination letters; how the IRS' voluntary compliance program can help plan sponsors "find, fix, and avoid" plan errors; and how the IRS will evaluate plan compliance levels and enforce the requirements of Federal law.

While everyone agreed that a dialogue between the various levels of government was important to pursue, and the overall session was not confrontational, the discussion was pointed at times. This was particularly true when the new IRS tools and programs that are being developed "to assist governmental plans in achieving compliance" were discussed.

These IRS efforts center on a new questionnaire. It is being developed because IRS officials admit that they "don't know a whole lot about the government plans sector." However, it is also clear that the questionnaire will go beyond basic data requests and will also include qualitative questions so that the IRS can "get a good feel" for the issues and barriers regarding governmental plans.

The questionnaire is still being worked on, and IRS officials said that they intend to use a focus group in its development. They also promised to let the questionnaire be reviewed by stakeholders in the governmental community. While the IRS also said that they appreciated the need for assurances that the information provided will not be used against plans, they also made it very clear that a failure to reply could trigger a compliance check/audit.

IRS officials said that they plan initially to send out the questionnaire to a small group (20 to 40), probably some time this summer. Then, using the results from this sample, a more comprehensive questionnaire will be prepared and sent to about 200 government plans. The agency hopes to send the final questionnaire out to all plans beginning in 2009.

Dave Stella, head of the Wisconsin Retirement System and Chairman of NCTR's Legislative Committee, and Leonard Bumbaca, member of the Board of Trustees of the Educational Employees' Supplementary Retirement System of Fairfax County, Virginia, and a member of NCTR's Executive Committee, attended the Roundtable representing NCTR. NASRA, NCPERS, GFOA and NAPPA also had representatives in attendance, as did a number of individual public plans.

Steve Yoakum, executive director of the Public School Retirement System of Missouri and NASRA President, commented after the Roundtable, "I heard 'what.' I'm not sure I really heard 'why.'" And this is indeed an important question. It could be, as represented, that having finished their enforcement focus on 403(b) and 457 plans, the governmental DB plans community was the natural place for the IRS to turn to next. It could also be that the Cycle C determination letter process was an obvious trigger.

However, it was also very clear from the Roundtable that the entire issue of plan funding was very much in the minds of the IRS. And this, as we know, is a common focus of opponents of DB plans. The more cynical among us might suggest that this new interest in enforcement for governmental DB plans reflects a belief by the Grover Norquists of the world that it is best to get such a process underway now at the Treasury and the IRS before the Bush Administration leaves town and a new White House, possibly in the control of the Democrats, takes over. After all, new press stories highlighting potential tax compliance problems for governmental DB plans could provide yet one more tool with which to distort the true record of public pensions. (The sudden interest on the part of the Bush Administration in providing a biogenerics process at the FDA – see January/February 2008 NCTR Federal e-News – is another possible example of this kind of political decision-making.)

In any case, the IRS is definitely gearing up for an increased enforcement effort targeting governmental plans. NCTR will be working closely with the IRS to ensure that the unique nature of our retirement systems, and our commitment to retirement security, is fully understood and appreciated as they move forward.

After all, we're from the government, too, and we're also here to help ensure that public employees will get the retirement benefits to which they are entitled!

House Passes PPA Technicals Without Governmental Plans "Credited Interest" Amendment; Situation Still Unclear

The House of Representatives has passed its version of a package of technical amendments to the 2006 Pension Protection Act (PPA) without including an amendment that would protect governmental plans from per se violations of the Age Discrimination in Employment Act (ADEA) if they have interest crediting features that provide above-market rates of return. The technical amendments passed by the Senate last December also did not contain this much-needed fix. While the amendment has broad-based support, it became ensnared in political maneuvers involving unrelated private sector amendments, and it remains unclear if and when this serious issue can be addressed.

Legislation to make technical corrections to the PPA is currently working its way through Congress. Different bills have now passed both the House (H.R. 3361) and Senate (S. 1974), but neither contains an amendment that NCTR and other public sector organizations, including employer and employee groups, have been trying for over a year now to obtain. This governmental plans amendment would provide a very important fix so that interest rates on refunds of employee contributions, interest-bearing deferred retirement option plans (DROPs), survivor benefits and other optional ancillary forms of benefits can continue to be set under applicable State or local laws rather than be capped by inappropriate Federal restrictions aimed at ERISA plans.

Currently, without this much-needed amendment, beginning in 2009 the Treasury Department's proposed regulations would limit the amount of interest that can be paid to a rate no greater than the so-called market rate, i.e. an index, a bond rate, or a fixed rate of 3% or 4%. This Federal cap could effectively amount to a cut in guaranteed benefits. However, if a governmental plan did not impose this cap and instead paid interest that exceeded the market rate, it would constitute a per se violation of ADEA, and the Equal Employment Opportunity Commission (EEOC) could pursue an enforcement action against the plan. (Per se is from the Latin for "by itself," and such a violation of law is essentially automatic, and other facts and circumstances are not taken into account.)

The governmental plans amendment that NCTR has helped fashion would allow state and local governments to continue to set interest crediting rates using their applicable state and local laws. This language was specifically developed so that everyone in the public sector could agree (unions, employers and pension plans). The amendment would simply provide that rates of interest used by State or local governmental plans in accordance with their public procedures (statute, ordinance, etc.) are to be treated as permissible methods of crediting interest under this new PPA standard. It does not provide an exemption from ADEA. Sign-offs from all four Congressional Committees that had jurisdiction – House Ways and Means; House Education and Labor; Senate Finance, and Senate Health, Education, Labor and Pensions (HELP) – were also obtained last fall.

However, the Treasury Department apparently convinced the Committee staff of Congressman George Miller (D-CA), who is Chairman of the House Education and Labor Committee, that the governmental plans amendment would permit age discrimination, particulalyl in the context of DROP plans. Therefore, when the PPA technicals bill was moved to the House floor for action just before the Congressional Easter recess earlier in March, the governmental plans amendment was not included.

Subsequently, following further discussions with Congressman Miller’s staff, the amendment was modified to clarify that if an interest rate could still be otherwise shown to violate ADEA, then the rate would not be exempt from the law; the amendment simply would not make such a rate a per se violation. This change obtained the AARP's approval as well, and Congressman Miller now officially supports the substance of the amendment.

But the delay that this created allowed others to decide to try to use the governmental plans amendment as leverage to get other more controversial amendments also included in the technicals bill. This is where the Education and Labor Committee's ranking Republican member, Congressman Buck McKeon (R-CA), became involved. He said that he had no issue with the merits of the amendment, but argued that if it was going to be included, then other “non-technical” amendments should also be allowed to be included. Mr. McKeon therefore objected at the last minute and kept the governmental plans amendment out of the PPA technicals bill that subsequently passed the House March 12th.

These other amendments have nothing to do with the public sector, are not necessarily that controversial themselves, but are nonetheless potential bargaining chips for other non-related issues. For example, there have been reports that Congressman Miller, who is trying to advance 401(k) reporting and disclosure reform legislation over objections from the private sector, is trying to leverage their support for his 401(k) legislation by using some of the “non-technicals” sought by the private sector as “sweeteners” in his bill. Miller’s delay on the governmental plans amendment has thus allowed it to be linked to these other potential “sweeteners.”

So the situation is still very fluid. Nevertheless, public employees and their pension plans should not effectively be held hostage while these other non-related negotiations are pursued. However, if the governmental plans amendment is not included in the PPA technicals bill, which appears increasingly likely to be the case, then it may be very difficult to find another vehicle in this election-year Congress to which to attach it.

With the elections looming ever closer, the Congressional schedule is going to become more problematic as time goes on. There continues to be talk of a second PPA bill with other non-technical amendments, and there could also be a potential opportunity on the 401(k) fees bill also, which Mr. Miller has marked up, but which Ways and Means must also clear.

In short, time is not on our side, and it is fast running out for this “must-do” amendment. If you have not yet told your Congressional representatives of the need to take action on this matter, the time to do so is now.

GASB Announces Formal Review of Governmental Plans Accounting Standards

The Governmental Accounting Standards Board (GASB) has now formally approved a new project to consider any needed changes to the existing standards of accounting and financial reporting for governmental plans. One possible change could be to require the disclosure of the market value of liabilities (MVL), an approach ardently advocated by some proponents of Financial Economics theory. Since MVL is not linked directly to funding methods used by governmental plans, its disclosure will only serve to create public confusion by calling into question the measurements of liabilities traditionally used by plans – and could encourage different and often competing interest groups to choose whatever number best suits their own political agendas. The new GASB project will probably take years to complete, but the potential harm to governmental DB plans requires the immediate attention of the public pension community.

The decision by GASB at its mid-April meeting ends a research process that began in 2006 to gather information regarding the effectiveness of the model and standards established for pension accounting and financial reporting in Statement No. 25, Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans, and Statement No. 27, Accounting for Pensions by State and Local Governmental Employers, in meeting the financial reporting objectives set for them.

The GASB staff ultimately proposed that the Board undertake a current agenda project to address pension-reporting issues and consider the possibility of amendments to existing standards “to improve accountability and the decision usefulness of reported information.” (Because the same model and similar standards also have been adopted for accounting and financial reporting for other postemployment benefits (OPEB) in Statements No. 43 and 45, the recommendation also includes consideration of potential issues relevant to OPEB reporting.)

In announcing its decision, GASB said that the reasons for the project included the sharp drop in the fair values of plan assets in the years 2000–2002 and the financial effects of recent decisions by many plan sponsors, made when plans were at or near fully funded status, to either redefine benefits (the examples they cite are the granting of thirteenth checks or ad hoc cost-of-living increases, and the revision of benefit terms in ways that increased benefits, sometimes with retroactive application to past periods of service), or to defer payment of some or all annual required employer contributions.

While GASB notes that “these events alone do not argue for a review of the accounting and financial reporting standards,” they also point out that the experience “raised the level of awareness and concern among some user groups, particularly taxpayers, regarding defined benefit pension plans.” As a result, GASB says that “greater attention” has been paid to the information about postemployment benefits that the GASB’s current standards require to be reported. They also note that “some commentators” believe that current accounting and financial reporting standards and the issues that they raise are among the various factors contributing to these recent developments.

GASB says that its project is not concerned with factors that may have influenced policy decisions made regarding postemployment benefits, nor with governance policies or controls that arguably should or should not have been in place in specific instances. However, GASB does believe that there are several questions that “are relevant in the context of the Board’s objective of establishing and maintaining high quality accounting and financial reporting standards that provide decision-useful information to financial statement users.” These questions specifically include:

· Have existing financial accounting standards enabled a faithful representation and transparent reporting of the financial effects of employers’ benefit obligations and actions taken in regard to benefits and the funding of benefits, including benefit costs, accrued benefit obligations, and plan assets?
· Has the reported financial information helped report users to assess the financial effects of employers’ benefit obligations and actions taken in regard to benefits and the funding of benefits in terms of interperiod equity?
· Has financial reporting both (a) framed postemployment benefit obligations and related transactions and events in a way that is relevant, reliable, and useful to those charged with making policy decisions regarding benefits and the funding of benefits and (b) provided useful information to all users of financial reports relevant to judgments and decisions related to employers’ benefit commitments and actions taken in regard to those commitments?

Proponents of MVL would argue that the absence of any requirement to disclose this information has resulted in an inaccurate view of the real financial effects of decisions regarded benefits and benefit funding. They would also insist that the lack of MVL disclosure and the failure to match liabilities with risk-free rates of return has resulted in interperiod inequties related to benefit funding.

However, by increasing the measurement of liabilities, thereby decreasing apparent funding levels, MVL disclosure could serve to only further exacerbate the challenges that already exist in seeing that annual required contributions are adequately satisfied. Nor does MVL provide relevant information about the future potential risk profile of a plan, which is critical to the development of appropriate investment strategies. Instead, by arguing against equity and for more “bond-like” investments, MVL proponents appears to contradict modern portfolio theory’s recognition of the role of risk and the standard practices of risk management, and would have plan fiduciaries abandon decades of reliance on reasonable assumptions related to rates of return based on a range of variables using past experience and expectations for future returns for capital markets.

It is true that GASB has recognized the importance of different accounting standards for the governmental sector. However, make no mistake: the MVL/Financial Economics debate will clearly have an impact on GASB’s consideration of any perceived changes that may be required to be made to Statement No.’s 25 and 27. For example, the GASB staff report explicitly notes the current controversy over this issue and includes among the major questions to be answered whether parameters regarding the basis for determination of the discount rate should continue to require the use of the long-term expected rate of return on assets, or whether another basis (for example a current risk-free rate of return, the employer's borrowing rate, or some other) should be used.

The GASB undertaking and its potential outcome are therefore critical to the future of public sector defined benefit plans. The anticipated time frame for the project is to have a formal "Invitation to Comment" issued in March, 2009, with Preliminary Views released by GASB in December, 2010, followed by a comment period, the development and discussion of responses, and the issuance of an Exposure Draft in September of 2012. This would also be followed by a comment period, with the issuance of final Statement(s) not expected until December of 2013.

But this does not mean that work on this issue can afford to wait. NCTR is currently in the process of finalizing a letter and comments to the American Academy of Actuaries and the Society of Actuaries, who are being heavily pressured to weigh in on the side of MVL proponents. A formal position in favor of MVL disclosure from these two organizations will not go unnoticed by GASB, and NCTR's goal is to ensure that the adequacy of the current efforts to date by the Academy and the Society to explore the issues surrounding this matter are called into question and their processes re-examined.

The first step in dealing with the challenge presented by MVL disclosure is to understand its nature. While the details can be confusing, the overarching issues need not be. If you and your plan have not yet been informed and educated on the serious threat posed by the MVL/Financial Economics debate, please do so ASAP.

NCTR, Other Public Sector Groups Seek Delay of Final IRS "Normal Retirement Age" Regulations

NCTR and 18 other public sector organizations have formally requested that the IRS delay the effective date for the application of its new "Normal Retirement Age" regulations to governmental plans indefinitely until the serious issues they present are adequately addressed. The rules, currently set to apply to plan years beginning on or after 1/1/2009, would require, for the first time, that governmental pension plans specifically define normal retirement age, or redefine normal retirement age, so that it is not based wholly or partly on years of service. There are other problems with the regulations affecting public plans that were extensively outlined in a joint comment letter to the IRS submitted by NCTR and NASRA in December of last year. Obtaining a delay in these regulations and, ultimately, major modifications for governmental plans, is one of NCTR's top priorities for 2008.

In May, 2007, the IRS issued final regulations dealing with in-service distributions after normal retirement age. The new regulations permit a pension plan to pay benefits upon an employee's attainment of "normal retirement age," even if the employee has not yet had a severance from employment with the employer maintaining the plan.

For the purposes of in-service distributions, the new regulations provide that "normal retirement age" under a plan must be an age that is "not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed." Several safe harbors are provided. For example, pursuant to a change made in the 2006 Pension Protection Act, a normal retirement age of at least age 62 is deemed to meet this new "typical retirement age" standard; for plans with normal retirement ages between ages 55 and 62, there will be a presumption that they are acceptable based on a "good faith determination of the typical retirement age for the industry in which the covered workforce is employed that is made by the employer."

For a normal retirement age that is lower than age 55, there is a presumption that it does not meet the new standard "absent facts and circumstances that demonstrate otherwise." (For plans where substantially all of the participants in the plan are qualified public safety employees, a normal retirement age of age 50 or later is deemed to meet the new standard.)

These new regulations raise a number of worrisome issues for governmental plans. For example what about plans with different normal retirement dates for different classes of employees or different normal retirement dates for different participants in the same class of employees? Then, in August of last year, the IRS issued Notice 2007-69, which underscored that the new regulations also do not provide a safe harbor with respect to a retirement age that is conditioned (directly or indirectly) on the completion of a stated number of years of service.

However, as we know, defined benefit plans of state and local governments often define their normal retirement age or normal retirement date as the date or age when participants qualify for normal or unreduced retirement benefits under the plan, and this is often conditioned, in whole or in part, on the completion of a stated number of years of service. Other governmental pension plans do not specifically define normal retirement age. Therefore, as part of its August, 2007 notice, the IRS also requested comments from sponsors of governmental plans on whether normal retirement age under such a plan may be based on years of service.

Prior to these final regulations, there was no authority that prohibited such practices for governmental pension plans. Moreover, the IRS has routinely approved service-based normal retirement ages through the determination letter process. Accordingly, NCTR and NASRA filed comments with the IRS in December of 2007 requesting that the IRS refrain from creating standardized definitions for early or normal retirement age with regard to governmental plans, and instead defer to the applicable state or local laws, regulations and policies governing the plan.

As these joint comments pointed out, requiring governmental pension plans to specifically define normal retirement age, or redefine normal retirement age so that it is not based wholly or partly on years of service, is particularly problematic where attainment of normal retirement age entitles participants to rights that are protected by constitutional guarantees.

As the 2007 NCTR/NASRA joint comments pointed out, any time a State or local retirement system is required to be amended, it generally requires a State legislative initiative or enabling authority since pension plans of States and localities are established by these governments acting in their sovereign capacity and generally are adopted by and subject ultimately to popularly-elected governmental bodies. “The benefits provided by many public employee retirement systems are also subject to state constitutional or statutory provisions that bar public employers from taking back or reducing benefits once they have been established,” the comments stressed.

However, the IRS has yet to respond by making modifications to the final regulations. Therefore, on April 30, 2008, NCTR, NASRA and 17 other public sector organizations -- including employer and employee representatives -- filed a formal request for an extension of the effective date for governmental plans “in order to permit the IRS to fully consider and respond to public sector concerns with the Final Regulations, provide clarification with regard to unsuitable or unclear definitions, provide ample time for State and local governing bodies to respond, and to avoid confusing and potentially harmful actions.”

The request pointed out that unless changes to the final regulations are made for governmental plans, the IRS will essentially be placing States and localities in the position of either being out of compliance with Federal regulations or incurring enormous financial and administrative costs and violating their own constitutional, statutory or case law protections. Furthermore, the letter notes, without the clarifications requested by NCTR and NASRA with regard to inappropriate or unclear definitions, it is hard to see how governmental plans could reasonably be expected to follow the final regulations should they try. Finally, the letter concludes, it would also be impossible for most elected governmental bodies to amend State or local governing statutes in time to meet the required effective date.

Given the very serious disruptions that would result should the effective date for governmental plans remain unchanged, not to mention the significant financial impacts on the plan and plan sponsor that would accompany changing something as fundamental as the age at retirement, this issue is a top NCTR priority for 2008. Based on earlier discussions with the IRS and Treasury staff in 2007 concerning this issue, it would appear that some relief in connection with the final regulations is likely. However, absent any indication to date as to what this may look like, an extension of the effective date is therefore essential.

MEMORANDUM

TO: TFFR Board

FROM: Fay Kopp

DATE: March 6, 2008

SUBJ: BOARD READING

In its May issue, Governing Magazine discussed tiered benefit levels for government workers and teachers. ND was one of the states interviewed for the attached “Tower of Tiers” article. (But I still haven’t figured out how the reporter got the idea that our legislation “sailed through both the House and Senate with relative ease.” Did I miss something?)

Public pensions continue to be researched and analyzed. Here are a few more studies to review and add to your file.

- “The Miracle of Funding by State and Local Pension Plans,” Center for State and Local Government Excellence, April 2008.
- “State and Local Government Retiree Benefits: Current Funded Status of Pension and Health Benefits,” Government Accountability Office, Report to the Committee on Finance, U.S. Senate, January 2008.

Enclosures

memorandum

TO: TFFR BOARD

FROM: FAY KOPP

DATE: MAY 8, 2008

SUBJ: TFFR BOARD MEETING
THURSDAY, MAY 15, 2008

The May board meeting is filled with varied and interesting topics. First, Aaron Webb (legal counsel from AG office) and Carol Calhoun (special tax counsel from Washington DC law firm) will update and advise the board on issues relating to FICA taxation of retirement contributions. This discussion will be followed by updated cost information for a retiree 2% multiplier proposal from Chris Conradi via teleconference. The board will also be considering another TFFR eligible salary question. After legislative updates, the Board will go into Executive Session to discuss a disability application.

You might also want to add another date to your calendar. The June 20, 2008 SIB meeting will include a presentation from Miriam Carver, co-founder of the "Carver" model of board governance. All TFFR members are invited to attend this meeting which will focus on the SIB governance process and policies.

See you next week!

Enclosures